

INDIANA DEPARTMENT OF STATE REVENUE

Revenue Ruling #2002-01TPT

July 23, 2002

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with the information about the Department's official position concerning a specific issue.

ISSUES

Tobacco Products Tax – Imposition and Credits

Authority: IC 6-7-2-7, IC 6-7-2-2, IC 6-7-2-14

The taxpayer requests the Department to rule whether or not:

1. Under the taxpayer's Proposed Change, the taxpayer is liable for the tobacco products tax when replacement product is received by its Sales Reps; and
2. Under the taxpayer's Proposed Change, the taxpayer is entitled to receive credits for the taxes paid on products returned by its Sales Reps.

STATEMENT OF FACTS

The taxpayer is engaged in the promotion and sale of smokeless tobacco products in the State of Indiana and elsewhere throughout the United States. The taxpayer holds a valid Other Tobacco Products Certificate of Registration. Most of the taxpayer's customers are licensed wholesale distributors who resell the products to retailers and remit the tax on tobacco products.

Current Returned Goods Procedures

The taxpayer employs sales representatives ("Sales Reps"), who act as representatives for the taxpayer. These Sales Reps, furnished with company cars and a supply of stock ("car stock"), provide a service on behalf of its distributors by traveling to retail customers to sample and otherwise promote the sale of the taxpayer's tobacco products and to regularly replace outdated or damaged products ("returned products") with car stock. Returned products are accumulated by Sales Reps and periodically exchanged for an equivalent amount of fresh products ("replacement products") through certain of the taxpayer's wholesale distributor customers ("Central Service Jobbers" or "CSJs"). CSJs ship returned products back to the manufacturer's facility where the manufacturer

accepts such products on behalf of the taxpayer and issues affidavits of their return to the CSJ and the taxpayer. The taxpayer then issues a refund or credit to the CSJ for the original purchase price of the tobacco products. Currently, CSJs pay the tobacco tax on replacement products and obtain a credit for tax paid on returned products. The taxpayer pays the tobacco tax on the initial issuance of car stock at the time it is first received by Sales Reps.

Proposed Changes to Returned Goods Procedures

The taxpayer is considering changing the manner in which it processes replacement and returned products (the "Proposed Change"). Sales Reps will continue to replace outdated or damaged products with their available car stock. Under the Proposed Change, however, Sales Reps (not CSJs) will ship returned products directly to the manufacturer. The manufacturer will accept such products on behalf of the taxpayer and issue affidavits of their return solely to the taxpayer. Furthermore, under the Proposed Change, Sales Reps will order replacement product (in order to replenish their car stock) directly from the taxpayer rather than through a CSJ. The taxpayer will accordingly ship replacement products directly to the Sales Rep.

The taxpayer will ship car stock to locations where the taxpayer rents warehouse space for Sales Rep pickup. These locations for the most part coincide with our distributors' locations.

Under the Proposed Change, the taxpayer will separately account for each transaction (i.e., the sale of replacement product and the credit sale of returned product) on its books and records. Although a Sales Rep exchanges tobacco products on a can-for-can basis, a Sales Rep's order of replacement stock will generally not equal the number of cans returned at any one point in time. This difference, which is due primarily to timing, may result in a net lax liability or credit in any particular tax reporting period. For example, a Sales Rep may order two cases of replacement product on December 31st but not ship two cases of returned products back to the manufacturer until the following month when he accumulates a substantial quantity of products to return. Consequently, should these be the only transactions that occur within these respective monthly tax reporting periods, a tax would be due in December and an equal amount of tax would be credited or refunded in January.

Under the Proposed Change, CSJs will no longer be paying tax on replacement products ordered by a Sales Rep or filing for tax credits on products returned by a Sales Rep since the new process will not involve the CSJ.

DISCUSSION – ISSUE #1

Whether or not under the taxpayer's Proposed Change, the taxpayer is liable for the tobacco products tax when replacement product is received by its Reps?

IC 6-7-2-7 states:

A tax is imposed on the distribution of tobacco products in Indiana at the rate of eighteen percent (18%) of the wholesale price of the tobacco products. The distributor of the tobacco products is liable for the tax. The tax is imposed at the time the distributor:

1. brings or causes tobacco products to be brought into Indiana for distribution;
2. Manufactures tobacco products in Indiana for distribution; or
3. Transports tobacco products to retail dealers in Indiana for resale by those retail dealers.

IC 6-7-2-2 provides that a "Distributor" includes a person who manufactures, sells, barter, exchanges, or distributes tobacco products in Indiana to retail dealers for the purpose of resale.

In the instant case then, when a Sales Rep receives replacement products for the purpose of exchanging such product for returned products in Indiana, the taxpayer, as the distributor of such tobacco products, would be subject to tobacco products tax at that time.

RULING – ISSUE #1

The Department rules that the taxpayer will be subject to tobacco products tax when a Sales Rep receives replacement product for the purpose of exchanging such product for returned products in Indiana.

DISCUSSION – ISSUE #2

Whether or not under the taxpayer's Proposed Change, the taxpayer is entitled to receive credits for the taxes paid on products returned by its Sales Reps?

IC 6-7-2-14 states:

The department shall credit or refund to a distributor the tax paid under this chapter on tobacco products that are:

1. shipped outside Indiana;
2. returned to the manufacturer; or
3. destroyed by the distributor in the presence of an employee or agent of the department.

Here, the taxpayer is a statutory distributor of tobacco products and its Sales Reps will return outdated and damaged tobacco products to the manufacturer, therefore, the taxpayer falls within the ambit of IC 6-7-2-14 and is entitled to a credit or refund for damaged and outdated tax-paid product received from retailers and returned to the manufacturer.

RULING – ISSUE #2

The Department rules that the taxpayer is entitled to a credit or refund for damaged and outdated tax-paid product received from retailers and returned to the manufacturer.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, changes in statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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